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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
)
Section 257 Proceeding to)
Identify and Eliminate)
Market Entry Barriers)
for Small Businesses)

GN Docket No. 96-113

COMMENTS OF NATIONAL WIRELESS RESELLERS ASSOCIATION

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SUMMARY

Resale of telecommunications services has been and continues to be the primary means by which small businesses have entered the telecommunications marketplace. By adopting policies encouraging the resale of services offered by entities possessing market power, the Commission will eliminate the primary barrier to entry for small business -- the need to acquire, install and operate capital-intensive telecommunications facilities and equipment. Unfortunately, however, the Commission's own unclear and conflicting regulatory policies with respect to wireless resale constitute formidable barriers to small business participation in the wireless marketplace.

The most effective way for the Commission to improve opportunities for small business in the wireless telecommunications market is to clarify the rules regarding a facilities-based carrier's obligations vis-a-vis resellers and to speed resolution of pending complaints governing these issues. The current regulatory environment permits carriers to avoid negotiating in good faith with resellers in reaching agreements covering resale, including switch-based resale. Unfortunately, rather than removing barriers to entry and expansion in the wireless resale industry for small business, the recent Commission decision to sunset the resale rule in five years and the continuing delay in resolving CMRS interconnection issues and pending reseller complaints have accomplished just the opposite.

In the wireless arena, barriers to entry and expansion are particularly high. First, the Commission has recognized that wireless marketplace has been dominated by facilities-based carriers that have market power, thereby limiting the ability of others to compete. This market power has been reflected in numerous inequitable and discriminatory contract provisions which

resellers are routinely forced to accept such as high deposit requirements, pricing at rates higher than retail, meaningless volume discounts, and the unavailability of service options and features available to a carrier's retail customer. The carriers' market power is also reflected in excessive delays associated with entering into resale agreements and a virtually complete unwillingness to negotiate agreements to interconnect with a reseller's switch.

Second, in addition to the already high capital requirements associated with constructing and operating wireless networks, auctions have imposed even greater capital requirements on potential small business participants. And, despite a clear mandate from Congress, the Commission's success in promoting small business participation in wireless industry has been spotty at best.

For these reasons, the Commission must adopt policies that balance the unequal bargaining positions between carriers and resellers and promote facilities-based solutions available to small businesses. The unequal bargaining position of carriers, NWRA submits, is best remedied first by adopting a blanket resale rule that clearly defines a carrier's resale obligations to resellers. A Commission policy immediately promoting unencumbered resale and interconnection must replace the dubious assumption that competition among facilities-based carriers will eventually provide such an opportunity.

Second, the Commission must actively enforce the requirements of §§ 201 and 202 of the Act and require carriers to interconnect with reseller switches. A reseller switch can provide the perfect first step to establishing facilities-based operations, thereby enhancing opportunities for small firms as well as fostering greater facilities-based competition.

Third, consistent with the direction taken in WT Docket No. 96-148, the Commission should promote geographical partitioning of licenses and disaggregation of channels. Through these mechanisms, small wireless telecommunications businesses can further expand into facilities-based operations without facing the enormous capital requirements of auction.

Finally, the Commission should immediately classify facilities-based carriers as incumbent LECs in order to remedy the inequitable rate structures and other contract provisions that represent significant barriers to entry and expansion in the wireless marketplace for small businesses.

The most effective way for the Commission to tear down barriers to entry and improve opportunities for the vast majority of small telecommunications firms is to promote a robust wireless resale market. The Commission should begin now to correct its restrictive policies of the past and restore a level playing field for small business.

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COMMENTS OF NATIONAL WIRELESS RESELLERS ASSOCIATION

The National Wireless Resellers Association ("NWRA"), by its attorneys, respectfully submits its comments in this proceeding regarding barriers to entry for small telecommunication firms. As set forth below, NWRA believes it is important for the Commission to remember that resale of telecommunications services has historically been and continues to be the primary means by which small businesses have entered the telecommunications marketplace. Accordingly, existing and proposed restrictions on the resale of such services constitute precisely the kind of barriers to entry that Congress has required the Commission to identify and eliminate in this proceeding and beyond.

I. INTRODUCTION

NWRA is a trade association representing the interests of the wireless resale industry. Formed in 1987 by resellers of cellular telephone service as the National Cellular Resellers Association, NWRA changed its name in December of 1994 to reflect the broader spectrum of wireless communications technologies. NWRA's mandate is to promote competition in wireless services by improving the business climate for wireless resale. The members of NWRA typically purchase bulk capacity from facilities-based providers of wireless services such as cellular and now PCS and, in turn, resell such services to the public. As the Commission has

long recognized, such resale enhances competition at the retail level to the benefit of consumers.¹

Given the capital-intensive nature of the telecommunications industry, resale represents a critical means of entry into the telecommunications market for small firms. For example, MCI began its long distance business by reselling the services of AT&T. More recently, the importance of resale to small telecommunications businesses has taken on new dimensions in the age of spectrum auctions. Small businesses and entrepreneurs have limited access to the vast amounts of capital required to win a license at auction, construct facilities within the build-out period, and cover all of the expenses needed to get a facilities-based wireless business up and running. Moreover, as noted in the Notice of Inquiry ("NOI"), credit has steadily become more difficult for small businesses to obtain, even as the telecommunications market expands.² Given these limitations, most small businesses can enter the telecommunications market in general, and the wireless telecommunications market in particular, only through resale.

In addition, in many markets, resellers provide the only competition to entrenched facilities-based carriers who dominate the wireless market. For example, the NOI acknowledges that the six RBOCs, AirTouch, McCaw (now owned by AT&T), GTE and Sprint control nearly 86% of the cellular industry, and that nine of these ten companies control 95% of the cellular population and licenses in the 50 BTAs that have one million people or more.³ The NOI also

¹ See *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 299 (1976).

² See NOI at ¶ 9.

³ NOI at n.17.

reveals that market power is becoming even more concentrated in the hands of a powerful few.⁴

Innovative resellers who understand a local market and can design a system for that market's unique needs may be the only entities who are able to compete with the established carriers.

In recognition of resale's central importance in providing opportunities to small telecommunication firms, the Commission has rightfully focused at least part of this proceeding on reviewing its resale policies. Specifically, the NOI poses the following questions, among others:

- (3) What difficulties do small businesses face in their dealings with suppliers, vendors, contractors, or FCC licensees?
- (4) What obstacles do small businesses face in their abilities to resell, interconnect, or benefit from economies of scale?
- (5) Do high deposit requirements deter small business entry into resale?
- (8) Do small businesses have particular difficulties in obtaining government contracts, licenses . . . or other government benefits? Have small businesses faced any such problems regarding FCC policies or rules?⁵

In an effort to provide the Commission with data by which to answer these questions, NWRA surveyed wireless resellers about their businesses and what barriers they have encountered in entering or expanding in the telecommunications market. Aggregated results of the survey questions are attached as Appendix A.

⁴ *Id.*; see also *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317 at n.20 (Aug. 18, 1995) ("1995 CMRS Report") (acknowledging the "trend toward concentration of the cellular business in the hands of telephone companies").

⁵ NOI at ¶25.

In general, the survey indicates that most wireless resellers fall under one of the definitions of small business used by the Commission or the Small Business Administration. Respondents to the survey also identified several specific barriers to entry and expansion faced by resellers, including unclear and conflicting regulatory policies, lengthy regulatory delays, unequal bargaining position with carriers (FCC licensees), inequitable pricing structures, and the intransigence of carriers with respect to the negotiation of reseller-switch interconnection agreements. Each of these barriers is discussed at length below.

In addition to these concerns, NWRA submits that, in the context of spectrum auctions, the capital necessary to bid at auction, combined with the funds necessary to construct and operate a wireless communications network, constitutes the single largest barrier to small business entry into the facilities-based wireless telecommunications marketplace. Bidding credits, tax certificates and the like, when extended to minority or women-owned small businesses are not, however, the only means by which to encourage “economic opportunity and competition and [ensure] that new and innovative technologies are readily accessible to the American people”⁶ In particular, these goals of Congress are realizable through effective resale policies, including switch-based resale as well as geographic partitioning of licenses and disaggregation of frequencies.⁷

⁶ 47 U.S.C. §309(j)(3)(B).

⁷ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking*, 10 FCC Rcd. 10667, 10713 (1996)(tentatively proposing not to adopt a switch-based resale requirement); *In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, WT Docket No. 96-148, *Notice of Proposed Rulemaking*, FCC 96-287 (Released: July 15, 1996)(tentatively proposing to adopt geographic partitioning and spectrum disaggregation by

II. WIRELESS RESELLERS ARE SMALL BUSINESSES

In its most recent consideration of this issue, the Commission assumed that all resellers are small businesses.⁸ In addition, previous definitions of small business employed by the Commission and the Small Business Administration ("SBA") have encompassed most or all wireless resellers. Wireless resellers should be classified as small businesses in this context as well.

Prior to NWRA's survey, data regarding the size of the wireless resale industry, and the entities comprising that industry, had not to NWRA's knowledge been collected. The results of the survey support both the Commission's and the SBA's size assumptions. For example, the Commission has used a \$40 million average gross revenue threshold to define small business in the PCS and Multipoint Distribution Service context.⁹ Sixty-nine percent of respondents to NWRA's survey report less than \$15 million in annual gross revenues. Another 16% report annual gross revenues between \$15-50 million. The final 16% report greater than \$50 million in annual gross revenues.¹⁰

PCS licensees).

⁸ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order*, FCC 96-263, CC Docket No. 94-54 (released July 12, 1996) ("CMRS Resale R&O").

⁹ See NOI at ¶ 14.

¹⁰ The percentages add up to greater than 100 because figures with a remainder greater than five-tenths of a percentage point were rounded up.

The SBA has defined small businesses as those employing fewer than 500 employees.¹¹ Seventy-five percent of wireless resellers surveyed by NWRA employ between one and 100 people. The rest employ more than 100 people, and, most likely, less than 500 (although survey results do not define an upper threshold).

The characteristics of a small business in the wireless resale context include lack of resources sufficient to overcome barriers to entering the market and difficulty in expanding operations. Absent barriers to entry and expansion that currently exist by virtue of carrier practices and regulatory policies and delays, wireless resellers are capable of competing effectively and, indeed, flourishing.

III. UNCLEAR AND CONFLICTING REGULATORY POLICIES ERECT SIGNIFICANT MARKET BARRIERS TO SMALL, WIRELESS TELECOMMUNICATIONS RESELLERS

The most effective way for the Commission to improve opportunities for small business in the wireless telecommunications market is to clarify the rules regarding a facilities-based carrier's obligations vis-a-vis resellers. The current regulatory environment permits carriers to avoid negotiating in good faith with resellers in reaching agreements covering both resale and switch-based interconnection.

Unfortunately, rather than removing barriers to entry and expansion in the wireless resale industry, the recent Commission decision to sunset the resale rule in five years and the continuing delay in resolving CMRS interconnection issues and pending reseller complaints have accomplished just the opposite.

¹¹ See NOI at n.13.

A. Sunset of The Resale Rule Increases Barriers to Entry for Wireless Resellers

The Commission recently decided to sunset its longstanding rule prohibiting carriers from restricting resale of their services.¹² Even assuming that the Act permitted such sunsetting, which it does not, the Commission based its decision on the unsupported assumption that full competition will be realized in the CMRS market within five years, and that, as a result, wireless carriers will soon lack the market power to impose unreasonable restrictions on resale.¹³

The Commission's own data demonstrate the fallacy of the assumptions that underlie the sunsetting of the resale rule. According to the NOI, small telecommunications businesses currently possess a relatively small percentage of market share.¹⁴ Moreover, this already-diminished market share is shrinking as the market grows.¹⁵ At the same time, the availability of credit to small businesses is steadily declining.¹⁶ These developments, which clearly illustrate a trend toward concentration that favors facilities-based carriers, stand in stark contrast to the Commission's assumptions in the CMRS Resale R&O.

¹² CMRS Resale R&O at ¶24. NWRA has petitioned for reconsideration of the CMRS Resale R&O arguing, among other things, that Sections 201 and 202 of the Communications Act of 1934 (“the Act”) prohibit the imposition of resale restrictions on wireless services. NWRA does not here repeat the arguments set forth in its petition, but instead highlights the barrier to entry and expansion that elimination of the rule creates.

¹³ See, e.g., CMRS Resale R&O at ¶ 24. NWRA’s petition for reconsideration also questions the Commission’s assumption that the level of competition in a market is relevant to the removal of the resale requirement. Even if it were relevant (which it is not), wireless markets are not now and will not soon be fully competitive, as discussed below.

¹⁴ NOI at ¶ 6; see also 1995 CMRS Report at ¶27 (“In practice, resellers [also] have little market share”).

¹⁵ *Id.* at n.17.

¹⁶ *Id.* at ¶ 9.

NWRA's survey results also disprove the Commission's assumptions in the CMRS Resale R&O. According to the Commission, at the end of a five year transition period, sufficient competition will exist such that carriers will no longer possess the market power and the resale rule will be unnecessary.¹⁷ One hundred percent of NWRA's respondents -- representing nearly one-fifth of all resellers -- disagree with the Commission's prediction. In the only unanimous response supplied by this diverse group, every single respondent strongly agrees that, as a result of their size and market power, carriers dictate terms and conditions in agreements with resellers, rather than engaging in good faith negotiations. Furthermore, fully 95% strongly agree that carriers' failure to negotiate in good faith stems from the lack of clear rules regarding their obligations vis-a-vis resellers. These survey results confirm 1) that carrier reluctance to negotiate fair and reasonable resale agreements will not change with the advent of increased competition and 2) that this reluctance, combined with inconsistent FCC rules and policies, constitute primary barriers to small businesses seeking to enter the wireless telecommunications marketplace.

The sunseting of the resale rule reflects the Commission's mistaken assumption that the resale rule "like all regulation, necessarily implicates costs" and should be eliminated when competitive conditions make it unnecessary.¹⁸ The Commission's desire to replace regulation with reliance on a market solution is not inconsistent with the maintenance of a resale rule. The resale rule serves merely as a regulatory backstop, imposing none of the costs typically

¹⁷ See CMRS Resale R&O at ¶¶14, 24.

¹⁸ *Id.* at ¶14.

associated with government regulation. If the market functions as the Commission anticipates, the market will provide even greater competitive opportunities for resellers than currently exist with the rule in effect. If, however, the market does not function as expected, the resale rule preserves the opportunity for small business to enter the the wireless market and compete with facilities-based carriers.

Moreover, the Commission's decision to sunset the rule based entirely on expectations of future market performance creates uncertainties in today's markets. These uncertainties result in costs for resellers, including difficulty in accessing capital and negotiating carrier agreements, that the Commission never considered in the CMRS Resale R&O. For example, 89% of NWRS'a survey respondents strongly agree that the actual or perceived reluctance of carriers to negotiate resale agreements reduces resellers' access to capital (the remaining 11% percent "somewhat agree"). Banks and other financial institutions are not likely to finance resellers that cannot obtain reasonable agreements for supply of their stock in trade, in this case airtime. Moreover, facilities-based carriers are unlikely to offer reasonable terms if they believe that they can simply delay such negotiations until a date after which they can entirely prohibit resale of their services. To the extent that the Commission's decision to sunset the resale rule leaves carriers with the erroneous impression that they are under no continuing obligation to permit resale of their services, the sunset provision must be recinded not only as contrary to law but also as a barrier to entry for small businesses.

If the sunset provision is permitted to stand, the Commission will have eliminated the general prohibition on resale restrictions in favor of a case-by-case approach to preventing

carrier abuses against resellers.¹⁹ However, the FCC complaint process moves much too slowly for this case-by-case approach to provide the same level of protection for small business as the resale rule. Small businesses simply do not have the resources to wait for an FCC decision that may take years to issue. For example, 78% of respondents to NWRA's survey strongly agree that waiting for the FCC (or a carrier) to make resale and interconnection decisions can drive a small operator out of business. A blanket resale rule that clearly defines a carrier's resale obligations to small businesses provides a much less onerous and much more efficient approach to enforcement of §§ 201 and 202 of the Act.

The Commission has previously recognized that carrier delays which have the effect of postponing service to a competitor's subscribers constitute anticompetitive conduct.²⁰ The Commission has also recognized its duty to prevent this type of conduct.²¹

B. The Commission Must Enforce The Act's Requirement That Carriers Negotiate Wireless Resale And Reseller Switch Interconnection Agreements In Good Faith

The decision to sunset the resale rule, combined with the Commission's inaction in resolving the CMRS interconnection issues and the pending reseller complaints on the same subject, have created a regulatory environment in which carriers, despite the requirements of Sections 201 and 202 of the Act, feel no pressing obligation to negotiate in good faith with

¹⁹ See CMRS Resale R&O at ¶ 22 ("an unjust or unreasonable resale practice or unjust or unreasonable discrimination against resellers may be the subject of a complaint alleging a statutory violation").

²⁰ See *Declaratory Ruling in the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, FCC 87-163 at ¶22 (May 18, 1987).

²¹ *Id.*

resellers regarding either resale or switch-based resale agreements. Numerous respondents to NWRA's survey identified Commission and carrier delay in making resale and interconnection decisions as significant obstacles to their ability to resell, and interconnect their services. Again, 78% strongly agreed, and 17% somewhat agreed, that waiting for such decisions can cause small firms to go out of business.

Specifically, respondents report that it can take months and even years for carriers to finally enter into resale agreements, if at all. Similarly, others noted that any requested departure from standard operations can take months to consider, let alone implement. As the Commission is undoubtedly aware, only one or two carriers have voluntarily negotiated an agreement with a wireless reseller to interconnect a reseller's switch, despite independent requests by several resellers and the obligation to do so under sections 201 and 202 of the Act.

Delays by both the carriers and the Commission regarding issues at the core of the wireless resale industry represent significant barriers to entry and expansion, not only by delaying additional competition and the deployment of innovative services, but also by creating uncertainty in the industry impacting resellers' access to capital. In light of these facts, NWRA submits that by immediately resolving the CMRS interconnection issues and the pending reseller complaints in a manner which promotes wireless and switch-based resale, the Commission will have made great strides in satisfying Congress' objectives in enacting Section 257.

V. THE COMMISSION MUST ENDEAVOR TO BALANCE THE UNEQUAL BARGAINING POSITIONS BETWEEN CARRIERS AND RESELLERS

The Commission has indicated that resale, in general, is contrary to a carrier's interest because it increases competition and leads to reduced profits.²² According to the Commission, basic economic principles dictate that, in many cases, carriers can and will take every avenue available to them to avoid resale.²³ However, some carriers have recognized that resellers offer extremely worthwhile business opportunities. Carriers have been loath to take advantage of these opportunities, unfortunately, given the negative attitude many of them hold toward wireless resellers.

In the wireless resale industry, facilities-based carriers exercise their market power in numerous ways, attempting to keep new entrants out of the market and preventing existing resellers from expanding their business. As noted above, respondents to the survey unanimously "strongly agreed" that as a result of their size and market power, facilities-based carriers dictate terms and conditions in agreements with resellers, rather than engaging in good faith negotiation. High deposit requirements, for example, are indicative of the unequal bargaining position between resellers and carriers and represent a common barrier to entry.

The balance of power between carriers and resellers -- big business and small business -- is already heavily tipped in favor of carriers. Section 257 requires the Commission to recognize this imbalance and take steps to ameliorate it in the Commission's policies and

²² See *In the Matter of the Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, First Report, FCC 95-317 (August 18, 1995).

²³ *Id.*

regulations. NWRA submits that the best way to balance the scales is to provide resellers a fair opportunity to compete and grow their businesses. The commission can accomplish this goal in the following ways. First, as set forth above, a Commission policy immediately promoting unencumbered resale and interconnection must replace the dubious assumption that competition among facilities-based carriers will eventually provide such an opportunity.

Second, the Commission must actively enforce the requirements of §§ 201 and 202 of the Act and require carriers to interconnect with reseller switches. Many resellers seek to evolve into facilities-based providers once they have become established in a market. However, many still face size and capital limitations that prevent them from winning a license at auction. A reseller switch can provide the perfect first step to establishing facilities-based operations, thereby enhancing opportunities for these small firms as well as fostering greater facilities-based competition.

Third, consistent with the direction taken in WT Docket No. 96-148, the Commission should promote geographical partitioning of licenses and disaggregation of channels. Through these mechanisms, small wireless telecommunications businesses can further expand into facilities-based operations without facing the enormous capital requirements of auction.

Finally, as discussed in detail in the following section, the Commission should immediately classify facilities-based carriers as incumbent LECs in order to remedy the inequitable rate structures and other contract provisions that represent significant barriers to entry and expansion in the wireless marketplace for small businesses. Each of these actions if taken by

the Commission will have the desired effect of balancing the bargaining position between resellers and carriers and offsetting the carrier's market power.

VI. BY TREATING FACILITIES-BASED CARRIERS AS INCUMBENT LECs, THE COMMISSION CAN REMEDY THE INEQUITABLE RATE STRUCTURES AND CONTRACT PROVISIONS THAT REPRESENT BARRIERS TO ENTRY AND EXPANSION FOR SMALL BUSINESSES

Perhaps the most pervasive barriers to entry and expansion in the wireless resale industry are the rate plans, terms and conditions offered to resellers by facilities-based carriers. By recognizing that facilities-based wireless carriers are offering local exchange service (simply using wireless rather than wireline technology), and treating such carriers as incumbent LECs under section 251(c) of the Act, the Commission could virtually eliminate the most significant market barriers facing both existing wireless resellers and other small businesses attempting to enter the wireless resale marketplace.

In general, the rates, terms and conditions contained in carrier agreements are designed to discourage both new entrants from getting a toe hold in the marketplace and existing resellers from expanding. For example, resellers have reported that some carriers require deposits in the amount of \$1000 per number. Thus, a reseller serving only 500 customers would need to maintain \$500,000 on account with the carrier. This money not only represents a barrier to entry into the wireless market, but also is unavailable for use by an existing reseller to operate or expand its business, thereby significantly increasing the reseller's cost of capital. Needless to say, few retail customers to NWRA's knowledge have ever been required to post a \$1000 deposit prior to activating his or her number.

Some respondents to the survey indicate that certain carriers offer no discounts for volume and others that do offer volume discounts structure them in such a way as to require the reseller to buy the business (i.e., sell below cost) for extended periods of time before finally reaching any economies of scale on total billable minutes of use. Another reseller explains that its “volume discount” is meaningless, having reached the highest (most discounted) tier after only three months of operation. Volume “discount” discrimination also exists. For example, one respondent reports that a retail customer that spends \$300 per month receives lower rates from a carrier than does a reseller who uses over 1 million minutes per month.

With respect to pricing structures, respondents note that new rate plan packages and products that carriers offer to their retail subscriber base are often restricted from the wholesale side for many months, or even years, placing resellers at a significant competitive disadvantage. Carriers can offer their retail customers service options and features which are unavailable to the customers of resellers. Similarly, carriers reportedly provide discounts to their retail customers for roaming services, but do not offer resellers the same discounted roaming rates.

In light of these market realities, it is naive for the Commission to believe that the simple statement that “no provider may offer like communications services to resellers at less favorable terms or conditions than are available to other similarly situated customers, absent reasonable justification” is a sufficient policy governing wireless resale.²⁴ Resellers are constantly faced with discriminatory rate structures, terms and conditions and have neither the

²⁴ CMRS Resale R&O at ¶12.

resources nor the time to fight the carriers at the Commission, especially given the obvious ineffectiveness of the existing complaint process.

NWRA submits that the most appropriate means of remedying these inequitable rate and pricing structures, and opening the wireless marketplace to opportunities for small businesses, is to adopt a policy which recognizes that facilities-based carriers meet the definition of incumbent LECs under section 251(c) of the Act, and are subject to the wholesale/retail rate distinctions and other unbundling requirements set forth therein.²⁵ Because virtually all of the foregoing abuses are the result of confused wholesale/retail practices by the carriers, the abuses could be remedied through the application of section 251(c)'s clearly delineated unbundling and wholesale/retail pricing requirements.

A policy recognizing that facilities-based wireless carriers meet the definition of incumbent LECs is consistent with market reality. Specifically, as incumbent LECs bundle CMRS services in with the other services they offer as incumbent LECs, and as their CMRS services are no longer required to be offered by structurally separate subsidiaries, their CMRS services become direct substitutes for, and indistinguishable from, their other service offerings. Under these conditions, where wired and wireless, fixed and mobile are indistinguishable in terms of their functionality, there is no reason to distinguish from a regulatory standpoint between CMRS and wired services for purposes of applying the requirements of Section 251(c).

²⁵ NWRA's arguments in this regard are further detailed in its Comments submitted in CC Docket 96-98 dated May 16, 1996. NWRA thus disagrees with the Commission's conclusion to the contrary that facilities-based CMRS providers should not yet be treated as incumbent LECs. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, FCC 96-325 (released August 8, 1996), ¶1004.

Accordingly, the Commission should acknowledge that under circumstances such as these, the CMRS operations of incumbent LECs must be treated no differently than their other operations - access to their CMRS facilities should be provided on an unbundled basis in the same manner as they provide access to their other network facilities, in accordance with section 251(c). The result would be uniform regulations for both wireless *and* wireline local exchange services at both the wholesale and retail levels.

In a rapidly changing technological environment, the Commission must ensure that its rules and policies remain technology-neutral, meaning that it must strive to maintain a level regulatory playing field for similarly situated service providers regardless of the technologies by which their services are delivered. Consistent with the requirements of section 251(c), and in order to arrive at just, reasonable and non-discriminatory rates for resellers, facilities-based CMRS providers should be required to offer wholesale service to resellers at prices based on the carriers' retail rates "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided" by the carrier in providing service to the reseller.²⁶

Recognition by the Commission that facilities-based carriers are subject to the wholesale/retail rate distinctions and other unbundling requirements set forth in section 251(c)

²⁶ See 47 U.S.C. § 252(d)(3). The mechanism established by Congress in Sections 251(c)(4) and 252(d)(3) of the Communications Act of 1996 governing wholesale pricing of telecommunications services offered by LECs establishes wholesale rates on the basis of the retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the [LEC]." 47 U.S.C. § 252(d)(3).

would thereby serve to remedy the pricing structure-based barriers to entry and expansion currently plaguing the wireless resale industry.

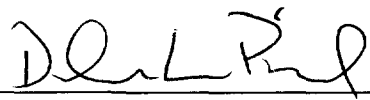
IV. CONCLUSION

The most effective way for the Commission to tear down barriers to entry and improve opportunities for the vast majority of small telecommunications firms is to promote a robust resale market. In the past, resellers have demonstrated the ability of resale to open up imperfect markets and enhance competition. Today, resale continues to serve as the primary point of entry for small telecommunications businesses and entrepreneurs, and provides competition in markets still dominated by a handful of entrenched carriers. Resale allows firms to enter markets without the vast amounts of capital required to implement a facilities-based system. It allows local entrepreneurs to develop niche markets that large carriers will not serve. And, ultimately, it provides consumers with a wider range of affordable communications options.

Respectfully submitted,

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APPENDIX A

Summary of NWRA's Survey Responses (19 responses out of 100 surveys distributed)

BUSINESS PROFILE

(1) Respondents provide the following communications services:

- 100% resell cellular
- 84% resell long distance
- 79% resell paging
- 11% resell PCS (16% intend to once systems are functioning)
- 11% resell SMR
- 21% resell landline local exchange

(2) Respondents serve the following regions of the United States:

- 16% resell services in the Northeast
- 32% resell services in the Southeast
- 5% resell services in the South
- 32% resell services in the Midwest
- 21% resell services in the Southwest
- 21% resell services in the West
- 16% resell services in the Northwest

(3) Respondents serve the following number of cellular and PCS subscribers:

- 11% serve less than 1,000 subscribers
- 26% serve 1,000-5,000 subscribers
- 32% serve 5,000-25,000 subscribers
- 32% serve more than 25,000 subscribers

(4) Respondents directly employ the following number of people:

- 11% employ 1-10 people
- 42% employ 10-25 people
- 11% employ 25-50 people
- 11% employ 50-100 people
- 26% employ more than 100 people

(5) Respondents report the following annual gross revenues:

32% report annual gross revenues between \$1-5 million
37% report annual gross revenues between \$5-15 million
16% report annual gross revenues between \$15-50 million
16% report annual gross revenues greater than \$50 million

MARKET BARRIERS

(6) Respondents report encountering the following obstacles to accessing capital and credit.

A. **Small Asset Base:** small businesses have fewer assets and less leverage for loans. Therefore, small businesses must contribute a larger percentage of their operating capital in order to secure a loan.

68% strongly agree with this statement
21% somewhat agree with this statement
11% disagree with this statement

B. **Stock Financing:** small businesses cannot obtain financing through stock sales, and are restricted to cash, bank loans or venture capital.

53% strongly agree with this statement
32% somewhat agree with this statement
16% disagree with this statement

C. **Government Regulation:** FCC rules or policies have reduced small business access to capital.

26% strongly agree with this statement
58% somewhat agree with this statement
16% disagree with this statement

D. **Resale Restrictions:** actual or perceived reluctance by carriers to negotiate resale or interconnection agreements reduces access to capital.

89% strongly agree with this statement
11% somewhat agree with this statement
0% disagree with this statement